

STATE OF MICHIGAN
COURT OF APPEALS

THERESA SAUKAS,

Plaintiff-Appellant,

v

WALKER STREET PHARMACY, INC.,

Defendant-Appellee.

UNPUBLISHED

August 4, 2005

No. 260560

Kent Circuit Court

LC No. 03-001868-NH

Before: Murphy, P.J., and Sawyer and Donofrio, JJ.

PER CURIAM.

This case arises from a drug-induced life-threatening rash, the effects of which plaintiff continues to suffer. She sued defendant pharmacy, alleging that it was negligent for giving her such a large dose of seizure medication when it knew or should have known of a potentially serious interaction with another drug plaintiff was taking. The circuit court granted defendant's motion for summary judgment, finding that defendant owed plaintiff no duty under the circumstances. We affirm.

This Court reviews de novo circuit court decisions granting summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Because the court went beyond the pleadings in granting summary judgment, MCR 2.116(C)(10) is the appropriate authority. *Driver v Hanley (After Remand)*, 226 Mich App 558, 562; 575 NW2d 31 (1997). Summary disposition of all or part of a claim or defense may be granted when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). The facts are not in dispute.

The existence of a legal duty is a question of law. *Beaudrie v Henderson*, 465 Mich 124, 130; 631 NW2d 308 (2001). This Court considered the duty of a pharmacist in a negligence action in *Stebbins v Concord Drugs*, 164 Mich App 204; 416 NW2d 381 (1987). The plaintiff alleged negligence for the pharmacist's failure to warn him of the side effects of a properly prescribed drug. *Id.* at 215. This Court noted that pharmacists are held to a high standard of care in correctly filling prescriptions but that they are generally not liable for damages resulting from a properly filled prescription. *Id.* at 215-216.

This Court held that "a pharmacist has no duty to warn the patient of possible side effects of a prescribed medication where the prescription is proper on its face and neither the physician

nor the manufacturer has required that any warning be given to the patient by the pharmacist.” *Id.* at 218.

In *Adkins v Mong*, 168 Mich App 726, 732; 425 NW2d 151 (1988), this Court held that pharmacists have no duty to monitor a patient’s drug usage and intervene in the case of addiction. See also *Kintigh v Abbot Pharmacy*, 200 Mich App 92, 94; 503 NW2d 657 (1993). The plaintiff’s presentation of the “nonlegal authorities” of a standard of practice of the American Pharmaceutical Association and an article from a professional periodical did not persuade this Court otherwise. *Adkins, supra* at 731.

In *Baker v Arbor Drugs, Inc.*, 215 Mich App 198, 201, 206; 544 NW2d 727 (1996), this Court found that the pharmacist breached its duty by not following a drug interaction warning that its computer software generated. However, this Court found the duty because the pharmacy specifically advertised its drug interaction system and thus voluntarily assumed a function it was not legally required to do. *Id.* at 205-206.

Defendant’s legal duty in this case is not as broad as plaintiff argues. She does not dispute that it filled the prescription as her physician wrote it. Nor is she claiming that it failed to warn her of side effects. Instead, she claims that defendant should have discovered that her usage of Depakote would interact harmfully with the Lamictal order she was submitting. But defendant had no reason to think that plaintiff was on Depakote. The pharmacy’s record of her prescription for that drug indicated that she discontinued use of it six months earlier. Defendant had no way of knowing that she had ordered more from a mail order source. Indeed, its drug interaction system indicated no red flags because there was no reason to assume that plaintiff was on Depakote. This case is therefore factually distinguishable from *Baker, supra*, where a warning was missed. Nor did defendant under the rule of *Adkins, supra*, and *Kintigh, supra*, have a duty to inquire about or monitor plaintiff’s drug history.

Plaintiff contends that promulgation of new professional standards in 1998 have altered the above case law. According to Rule 20:

(2) A pharmacist shall not fill a prescription order if, in the pharmacist’s professional judgment, any of the following provisions apply:

- (a) The prescription appears to be improperly written.
- (b) The prescription is susceptible to more than 1 interpretation.
- (c) The pharmacist has reason to believe that the prescription could cause harm to the patient.

* * *

(4) To encourage intended, positive patient outcomes, a pharmacist shall communicate, to the patient or the patient’s caregiver, necessary and appropriate information regarding safe and effective medication use at the time a prescription is dispensed. As used in this subrule, “caregiver” means the parent, guardian, or

other individual who has assumed responsibility for providing a patient's care.
[1998 MR 4, R 338.490.]

The argument is unavailing because the rules by their terms do not fit the facts of this case and even if they do they do not have the effect of altering Michigan common law.

Rule 20(2) does not apply. The prescription was not improper on its face, nor was it subject to more than one interpretation. It clearly indicated the drug and the amount to dispense. Subsections (a) and (b) therefore are not met. For the reasons stated above, neither is subsection (c) met. Defendant had no reason to believe that Lamictal would harm Saukas in any way. The trial court did not err in rejecting arguments under Rule 20(2).

Rule 20(4) did not require defendant to contact plaintiff's physician because it speaks of specifically defined caregivers and not doctors. It arguably required defendant to inform plaintiff of potentially harmful drug interactions, as they relate to the safe and effective medication use of the prescription defendant was filling. However, as noted, the pharmacy in this case had no reason to know of any potentially harmful interactions.

The trial court did not err in granting summary disposition to defendant.

Affirmed.

/s/ David H. Sawyer
/s/ Pat M. Donofrio